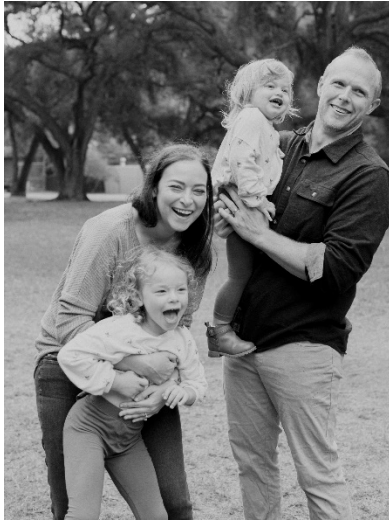


2023 Real Property Law Health & Wellness Retreat

Vive La Difference!: Unraveling the Differences among Office, Retail & Industrial Commercial Leases



Corinne Wessel

Valence LLP

corinne@valencelaw.com

Corinne is an experienced commercial real estate attorney. With a proactive and practical approach to transactions, she guides clients through all aspects of commercial leasing transactions, including office, R&D, life sciences, retail, industrial, and medical leases.

She regularly drafts and negotiates leases, amendments, assignments, subleases, termination agreements, licenses, SNDA's, estoppels, letters of intent, letters of credit, brokerage agreements, and other ancillary commercial contracts. Corinne has experience interacting and interfacing with clients of all sizes, ranging from small startups to large national companies.

Corinne holds a B.A. from the University of California, Davis, and a J.D. from Whittier Law School graduating cum laude, and is admitted to practice in California.

When not working, she enjoys reading and embarking on outdoor adventures with her family.

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Jenifer L. Swanson

California Business Law Group, PC

jswanson@cblg.biz

With 13 years' experience in commercial real estate management prior to pursuing her law career, Jenifer has a practical understanding of commercial real estate and the daily challenges faced by property owners and managers. She puts that understanding to good use assisting her clients with lease review and drafting for retail, office, and industrial leases. She also represents investors and developers in purchase and sale transactions, 1031 exchanges, and refinances. In

addition to real estate transactions, Jenifer works with small business owners to form entities and ensure compliance with California corporate laws, including S-Corps and LLCs as well as formation of single purpose entities.

Jenifer is currently an adjunct professor teaching Real Estate Transactions at University of San Diego, School of Law.

Jenifer obtained her Juris Doctorate as member of the inaugural class at the University of California, Irvine School of Law. She was a founding member of the UCI Law Review, the UCI School of Law Federalist Society, and the UCI Children's Advocacy Group.

Prior to law school, Jenifer obtained her B.S. in Business Administration, Management from San Diego State University and acquired her real estate broker's license in 2007, after having her salespersons license for 10 years, during which she worked in commercial property management.

Jenifer enjoys spending time with her two children and her husband. She also works on and races her family's 1964 Corvette in many vintage races.

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Katie Phetteplace

Starr Finley LLP

katie@starrfinley.com

For longer than she cares to admit, Katie Phetteplace has been counseling clients across the commercial real estate market. Her extensive knowledge of the landscape, paired with a sharp business acumen and focus on client relationships, enables Katie to advise clients strategically and effectively in a wide variety of high-stakes commercial real estate transactions.

Katie has assisted buyers in the acquisition, finance, disposition, leasing, and stabilization of millions of square feet of office, retail, industrial, and multi-family properties. She acts as outside counsel for several banks and private money lenders, for loan originations, as well as workouts and foreclosures. Katie also has expertise in working with restaurants and food services, with experience ranging from local, neighborhood restaurants to national fine dining.

A food and wine connoisseur (aka snob), Katie enjoys traveling the world in search of new culinary experiences. To balance her foodie status, she is also runner and triathlete. Safely situated in the middle to back of the pack, Katie has completed seven marathons, dozens of half marathons, and is an IronMan.

Katie holds a JD from University of San Francisco and an LLM in Taxation from Golden Gate University. Additionally, she studied law at Charles University, Prague, Czech Republic and Trinity College, Dublin, Ireland. Katie also has a B.A. in Political Science, International Relations from University of California – Santa Barbara.

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Reference Materials

Retail

Prop 13 protection (Negotiated)

Notwithstanding anything to the contrary contained herein, Real Property Taxes, as used herein, shall not include any increase in Real Property Taxes attributable to any reassessment of the Shopping Center which occurs during the first two Lease Years to the extent that such reassessment arises or results from a "change in ownership" within the first two Lease Years triggered by actions of Landlord. The foregoing limitation is not in any way intended to limit the pass through to Tenant of (i) any statutory or other annual increase in Real Property Taxes (as such statutory increase may be modified by subsequent legislation), (ii) the initial reassessment of the Premises, (iii) the initial assessment of the Shopping Center, or any portion thereof, when the same is completed, or (iv) any increase in Real Property Taxes resulting from any alterations or reconstruction of any improvements.

Controllable Expenses Cap (landlord friendly)

Notwithstanding anything to the contrary herein, from and after the second full calendar year of the Lease Term, Tenant's share of Controllable Common Area Expenses shall not exceed the Controllable Common Area Expenses Cap (as such terms are defined below). For purposes of the foregoing, the term "**Controllable Common Area Expenses**" means all Common Area Expenses other than Taxes, insurance, utilities, security, Common Area Expenses payable pursuant to the CC&R's, non "free market" services (such as, but not limited to, trash pick-up to the extent Landlord has no right to competitively bid such service), expenses relating to extraordinary circumstances, and non-annual recurring expenses such as parking lot sealing and restriping, repainting and reroofing, and governmental requirements due to code changes. The term "**Controllable Common Area Expenses Cap**" shall mean for the second full calendar year of the Lease, one hundred five percent (105%) of Tenant's share of Controllable Common Area Expenses for the first full calendar year of the Lease and shall thereafter be increased, on a cumulative basis each successive calendar year during the Lease Term, to an amount equal to one hundred five percent (105%) of the prior calendar year's Controllable Common Area Expenses Cap. For purposes of illustration only, in the event the Controllable Common Area Expenses Cap in the second full calendar year equals \$3.00 per square foot of Floor Area per year then, in such event, the Controllable Common Area Expenses Cap in the third full calendar year would equal \$3.15 per square foot of Floor Area per year, the Controllable Common Area Expenses Cap in the fourth full calendar year would equal \$3.31 per square foot of Floor Area per year, etc.

Opening & Operating Covenant (Negotiated)

Opening and Operating Covenants. Tenant hereby agrees that Tenant will (i) initially open for business to the public no later than the date which is 150 days after the date Landlord delivers possession of the Premises to Tenant with all Landlord's Work Substantially Complete and (ii) from and after such initial opening continuously remain so open for business during normal business hours for the Shopping Center, subject to temporary interruption of business actually caused by casualty, condemnation, remodeling, preparing the Premises in connection with any assignment or subletting or other reasons beyond Tenant's reasonable control, provided Tenant is diligently pursuing the reopening and provided in the case of remodeling,

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such closure will not exceed 90 days. In addition, Tenant shall be permitted to close on any nationally or regionally recognized holidays. In the event Tenant does not operate in accordance with the requirements hereof and such default continues for more 30 days after written notice from Landlord to Tenant, then, in such event, Landlord may terminate this Lease upon written notice to Tenant and any time prior to the date Tenant so reopens for business and, in such event, Tenant shall reimburse Landlord for the unamortized Allowance paid to Tenant and all Lease commissions paid by Landlord.

Office

MODIFIED GROSS LEASE LANGUAGE CONSIDERATIONS

Base Year/Expense Year Comparisons – Tenant Favorable

In addition, if in any year following the Base Year, a new Operating Expense category or major expense (e.g., earthquake insurance; expanded janitorial or security service; concierge service; gym services) is included within Operating Expenses which was not included in the Base Year, then the amount of such new category or item shall be added to the Base Year for Operating Expenses for the purposes of determining the amounts payable by the Tenant during each subsequent year of the Term.

Gross Up Provision

For purposes of determining Rent Adjustments, if the Building is not fully occupied during all or any portion of the Base Year or any Adjustment Year during the Term, Landlord shall make appropriate adjustments to the variable components of Operating Expenses for the Base Year or such Adjustment Year, employing sound accounting and management principles consistently applied, to determine the amount of Operating Expenses that would have been paid or incurred by Landlord had the Building been 95% occupied, and the amount so determined shall be deemed to have been the amount of Operating Expenses for the Base Year or such Adjustment Year.

Reconciliation of Operating Expenses – Tenant Favorable

Tenant shall not be responsible for Tenant's Share of any Operating Expenses attributable to any Expense Year which are first billed to Tenant more than eighteen (18) months following the expiration of any Expense Year.

WORK LETTER LANGUAGE AND CONSIDERATIONS

Landlord Delay Concept

For purposes of the Lease and this Work Letter, the term "**Landlord Delay**" means any actual delay in the Substantial Completion of the Tenant Improvements caused by (i) Landlord's failure to timely approve or disapprove any drawings, plans or other matter in the time period required herein, or take any action prior to any deadline for taking such action, (ii) any other act or omission of Landlord or any Landlord Parties, or any of their agents, employees, contractors, subcontractors, suppliers or invitees, which materially interferes with Tenant's ability to perform the Tenant Improvement Work, (iv) Landlord's failure to timely disburse the Construction Allowance, or (v) Landlord's failure to provide reasonable access to the Premises other than for reasons beyond Landlord's reasonable control. Notwithstanding the foregoing,

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no Landlord Delay shall be deemed to have occurred unless until Landlord has been provided notice and given three (3) business days to correct the issue. There shall be excluded from the number of days of any Landlord Delay any days of delay which are primarily caused by Force Majeure.

HAZARDOUS MATERIALS – TENANT FAVORABLE

Landlord represents and warrants to Tenant as of the date of this Lease that, to Landlord's best knowledge, the Building and every part thereof (including, without limitation, the land underlying the same): (i) are not and have not been a site for the use, generation, manufacture, storage, disposal or transportation of any Hazardous Materials; and (ii) are presently in compliance with all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation those relating to soil and ground water conditions. Landlord hereby agrees to protect, defend, indemnify and hold harmless (by counsel reasonably satisfactory to Tenant) Tenant and Tenant's Agents (as defined hereinafter) from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, arising out of: (A) the presence in, upon, under or about the Premises or the Building of any Hazardous Materials in violation of Landlord's foregoing representation and warranty; and (B) any activity carried on or undertaken in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials by Landlord or Landlord Parties (as defined hereinafter) in, upon, under or about the Premises or the Building [and the Project]. The foregoing duty to protect, defend, indemnify and hold harmless Tenant and Tenant's Agents shall not, however, apply to any Hazardous Materials placed in, upon, under or about the Premises or the Building or the Project by Tenant or Tenant's Agents.

DENSITY RESTRICTIONS – BALANCED PROVISION

Tenant shall not be in default of the Lease if Tenant's density is greater than [X] per 1,000 rentable square feet of the Premises from time to time ("Excess Density"), provided that (i) such Excess Density is permitted by applicable law, (ii) if Landlord reasonably determines that such Excess Density results in Tenant's use of excess services beyond the standard consistent with the use by other office tenants in the Building, Landlord shall have the right to require that Tenant install supplementary heating and/or air condition units and separate meters or submeters, (iii) Tenant shall reimburse Landlord for any other reasonable costs actually incurred by Landlord resulting from such Excess Density (e.g. costs relating to additional maintenance and stocking of the restrooms), and (iv) Tenant shall otherwise be responsible to comply with all applicable laws with respect to such Excess Density.

Industrial

Sample Provision for when representing landlords:

It is intended by Landlord and Tenant that this Lease be an industrial gross lease, wherein Base Rent includes for Operating Expenses, Insurance, and Tax Expenses in the amount of the Base Year, except for janitorial and the Utility Expenses, which Tenant shall pay in full as of the Commencement Date. For Operating Expenses, Insurance, and Tax Expenses in excess of the Base Year Expenses, Tenant will pay all Operating Expenses, Insurance, and Tax Expenses with respect to such excess.

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Sample Provisions for when representing tenants:

It is intended by Landlord and Tenant that this Lease be an industrial gross lease, wherein Base Rent includes for Operating Expenses, Insurance, and Tax Expenses in the amount of the Base Year, except for janitorial and the Utility Expenses, which Tenant shall pay in full as of the Commencement Date.

CONDITION OF THE PREMISES AT DELIVERY

Tenant's Dream Provisions:

Condition of Premises.

- a) Lessor shall deliver the Premises to Lessee clean and free of debris on the Lease commencement date, excepting any items of property that are purchased by Lessee from Lessor or any affiliate of Lessor. The Premises shall be in compliance with all applicable laws, codes, and regulations, and to the extent that the Premises are not in compliance, Lessor will be responsible for the costs of any repairs required to comply.
- b) Lessee hereby accepts the Premises in their condition existing as of the execution of this Lease, subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto.

Far more likely:

Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Except as otherwise stated, the Premises will be in its "as-is, where-is" condition without representation or warranty.

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TENANT MOVE-IN AND LEASE RENEWAL ENVIRONMENTAL QUESTIONNAIRE FOR INDUSTRIAL PROPERTIES

Property Name: _____

Property Address: _____

Exhibit: D to the Lease Dated _____, 20____
Between

("Lessee")

and

("Lessor")

Instructions: The following questionnaire is to be completed by the Tenant Representative with knowledge of the planned/existing operations for the specified building/location. A copy of the completed form must be attached to all new leases and renewals, and forwarded to the Owner's Risk Management Department. Please print clearly and attach additional sheets as necessary.

1.0 **PROCESS INFORMATION**

Describe planned use (new Lease) or existing operations (lease renewal), and include brief description of manufacturing processes employed.

2.0 **HAZARDOUS MATERIALS**

Are hazardous materials used or stored? If so, continue with the next question. If not, go to Section 3.0.

2.1 Are any of the following materials handled on the property? Yes___ No___
(A material is handled if it is used, generated, processed, produced, packaged, treated, stored, emitted, discharged, or disposed.) If so, complete this section. If this question is not applicable, skip this section and go on to Section 5.0.

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Explosives | <input type="checkbox"/> Fuels | <input type="checkbox"/> Oils |
| <input type="checkbox"/> Solvents | <input type="checkbox"/> Oxidizers | <input type="checkbox"/> Organics/Inorganics |
| <input type="checkbox"/> Acids | <input type="checkbox"/> Bases | <input type="checkbox"/> Pesticides |
| <input type="checkbox"/> Gases | <input type="checkbox"/> PCBs | <input type="checkbox"/> Radioactive Materials |
| <input type="checkbox"/> Other (please specify) | | |

2-2. If any of the groups of materials checked in Section 2.1, please list the specific material(s), use(s), and quantity of each chemical used or stored on the site in the Table below. If

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convenient, you may substitute a chemical inventory and list the uses of each of the chemicals in each category separately.

Material	Physical State (Solid, Liquid, or Gas)	Usage	Container Size	Number of Containers	Total Quantity

2-3. Describe the planned storage area location(s) for these materials. Please include site maps and drawings as appropriate.

3.0 HAZARDOUS WASTES

Are hazardous wastes generated? Yes___ No___

If yes, continue with the next question. If not, skip this section and go to section 4.0.

3.1 Are any of the following wastes generated, handled, or disposed of (where applicable) on the property?

- | | |
|---|---|
| <input type="checkbox"/> Hazardous wastes | <input type="checkbox"/> Industrial Wastewater |
| <input type="checkbox"/> Waste oils | <input type="checkbox"/> PCBs |
| <input type="checkbox"/> Air emissions | <input type="checkbox"/> Sludges |
| <input type="checkbox"/> Regulated Wastes | <input type="checkbox"/> Other (please specify) |

3-2. List and quantify the materials identified in Question 3-1 of this section.

WASTE GENERATED	RCRA listed Waste?	SOURCE	APPROXIMATE MONTHLY QUANTITY	WASTE CHARACTERIZATION	DISPOSITION

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3-3. Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility, if applicable). Attach separate pages as necessary.

Transporter/Disposal Facility Name	Facility Location	Transporter (T) or Disposal (D) Facility	Permit Number

3-4. Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment? Yes___ No___
If so, please describe.

4.0 USTS/ASTS

4.1 Are underground storage tanks (USTs), aboveground storage tanks (ASTs), or associated pipelines used for the storage of petroleum products, chemicals, or liquid wastes present on site (lease renewals) or required for planned operations (new tenants)? Yes___ No___

If not, continue with section 5.0. If yes, please describe capacity, contents, age, type of the USTs or ASTs, as well any associated leak detection / spill prevention measures. Please attach additional pages if necessary.

Capacity	Contents	Year Installed	Type (Steel, Fiberglass, etc)	Associated Leak Detection / Spill Prevention Measures*

*Note: The following are examples of leak detection / spill prevention measures:

Integrity testing
Overfill spill protection

Inventory reconciliation
Secondary containment

Leak detection system
Cathodic protection

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- 4-2. Please provide copies of written tank integrity test results and/or monitoring documentation, if available.
- 4-3. Is the UST/AST registered and permitted with the appropriate regulatory agencies? Yes___ No___
If so, please attach a copy of the required permits.
- 4-4. If this Questionnaire is being completed for a lease renewal, and if any of the USTs/ASTs have leaked, please state the substance released, the media(s) impacted (e.g., soil, water, asphalt, etc.), the actions taken, and all remedial responses to the incident.
- 4-4. If this Questionnaire is being completed for a lease renewal, have USTs/ASTs been removed from the property? Yes___ No___
If yes, please provide any official closure letters or reports and supporting documentation (e.g., analytical test results, remediation report results, etc.).
-
-
-

- 4-6. For Lease renewals, are there any above or below ground pipelines on site used to transfer chemicals or wastes? Yes___ No___
For new tenants, are installations of this type required for the planned operations? Yes___ No___
If yes to either question, please describe.
-
-
-

5.0 ASBESTOS CONTAINING BUILDING MATERIALS

Please be advised that this property participates in an Asbestos Operations and Maintenance Program, and that an asbestos survey may have been performed at the Property. If provided, please review the information that identifies the locations of known asbestos containing material or presumed asbestos containing material. All personnel and appropriate subcontractors should be notified of the presence of these materials, and informed not to disturb these materials. Any activity that involves the disturbance or removal of these materials must be done by an appropriately trained individual/contractor.

6.0 REGULATORY

- 6-1. For Lease Renewals, are there any past, current, or pending regulatory actions by federal, state, or local environmental agencies alleging noncompliance with regulations? Yes___ No___
If so, please describe.
- 6-2. For lease renewals, are there any past, current, or pending lawsuits or administrative proceedings for alleged environmental damages involving the property, you, or any owner or tenant of the property? Yes___ No___
If so, please describe.
-
-
-

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6-3. Does the operation have or require a National Pollutant Discharge Elimination System (NPDES) or equivalent permit? Yes___ No___
If so, please attach a copy of this permit.

6-4. For Lease renewals, have there been any complaints from the surrounding community regarding facility operations? Yes___ No___

Have there been any worker complaints or regulatory investigations regarding hazardous material exposure at the facility? Yes___ No___

If so, please describe status and any corrective actions taken. Please attach additional pages as necessary.

6-5. Has a Hazardous Materials Business Plan been developed for the site? Yes___ No___
If so, please attach a copy.

6-6. Are any environmental documentation, chemical inventory, or management plan required by the local Fire Department or Health Department? Yes___ No___
If so, please attach a copy.

CERTIFICATION

I am familiar with the real property described in this questionnaire. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that the Owner will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

Signature: _____

Name: _____

Title: _____

Date: _____

Telephone: _____